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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 MIGUEL NUALLA HERNANDEZ,

CV F 05-0347 REC DLB HC

10 Petitioner,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
PETITION FOR WRIT OF HABEAS CORPUS  
FOR FAILURE TO OBEY A COURT ORDER

11 v.

12 ATTORNEY GENERAL JOHN  
13 ASHCROFT,

[Doc. 1]

14 Respondents.  
15 \_\_\_\_\_/

16 Petitioner is detained by the Bureau of Immigration and Customs Enforcement (“BICE”)  
17 and is proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

18 Petitioner filed the instant petition for writ of habeas corpus on March 14, 2005. By order  
19 of April 4, 2005, the Court directed Petitioner to submit a complete application to proceed in  
20 forma pauperis and certified copy of prison trust account statement.<sup>1</sup> Petitioner has failed to  
21 comply with the Court’s order.

22 DISCUSSION

23 Local Rule 11-110 provides that a “failure of counsel or of a party to comply with these  
24 Local Rules or with any order of the Court may be grounds for the imposition by the Court of any  
25 and all sanctions . . . within the inherent power of the Court.” District courts have the inherent  
26 power to control their dockets and “in the exercise of that power, they may impose sanctions  
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28 <sup>1</sup> On April 11, 2005, the order was returned to the Court with a notation that Petitioner was “out of custody.” (Court Doc. 9.)

including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal for failure to comply with court order).

In determining whether to dismiss an action for lack of prosecution, the Court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9<sup>th</sup> Cir. 1988). The Court finds that the public’s interest in expeditiously resolving this litigation and the court’s interest in managing the docket weigh in favor of dismissal, as this case has been pending since March 14, 2005. The Court cannot hold this case in abeyance indefinitely awaiting compliance by Petitioner. The third factor, risk of prejudice to Respondents, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, given Petitioner’s noncompliance with the Court’s order, no lesser sanction is feasible.

#### RECOMMENDATION

Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for Petitioner’s failure to prosecute. These Findings and Recommendations are submitted to the United States District Court Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, any party may file written objections with the court and serve a copy on all parties. Such a document

1 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."  
2 Replies to the objections shall be served and filed within ten (10) court days (plus three days if  
3 served by mail) after service of the objections. The Court will then review the Magistrate  
4 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure  
5 to file objections within the specified time may waive the right to appeal the District Court's  
6 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 IT IS SO ORDERED.

8 **Dated: May 25, 2005**  
9 3b142a

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE